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ALEXANDER L. STEVAS,
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No. 82-2034

In the

Supreme Court of the United States

OCTOBER TERM, 1982

IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF THE
COAST OF FRANCE ON MARCH 16, 1978.

ASTILLEROS ESPANOLES, S.A.,

Petitioner,

vs.

STANDARD OIL COMPANY (INDIANA),
AMOCO INTERNATIONAL OIL COMPANY,
AMOCO TRANSPORT COMPANY, CLAUDE PHILLIPS,
AND CONSEIL GENERAL DES COTES DU NORD, *etc., et al.,*
Respondents.

On Petition For A Writ Of Certiorari To The United
States Court Of Appeals For The Seventh Circuit

BRIEF OF THE AMOCO PARTY RESPONDENTS
IN OPPOSITION

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Dated: August 19, 1983

QUESTION PRESENTED

The question presented by the Petition for a Writ of Certiorari is:

May the United States District Court for the Northern District of Illinois, under the Illinois long-arm statute and consistent with the dictates of federal constitutional due process, assert personal jurisdiction over a non-resident corporate defendant where: (a) the defendant voluntarily sent its executives to solicit and to do business with Illinois residents in Illinois on at least seven separate occasions; (b) the defendant negotiated for business in Illinois; (c) the defendant, as a result of its solicitation and negotiation, executed in Illinois contracts to design and build the Amoco Cadiz oil tanker and three of its sisterships; (d) the defendant sent many letters and made many telephone calls to Illinois; (e) the defendant returned to Illinois on several occasions to discuss technical matters relating to the contracts it had executed; (f) the defendant solicited other business in Illinois; and (g) the causes of action against defendant for faulty design and construction of the Amoco Cadiz are directly related to and lie in the wake of its Illinois business activities?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 1 of the 14th Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Section 2-209 of chapter 110 of the Illinois Revised Statutes (formerly § 17 of chapter 110) provides:

(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

- (1) the transaction of any business within this State;
- (2) The commission of a tortious act within this State; . . .

(c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this Section.

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INTRODUCTION

The District Court found that Astilleros Espanolas, S.A.'s ("Astilleros") extensive and purposeful business dealings in Illinois were more than sufficient to satisfy the "minimum contacts" requirement of due process and thus subject it to the *in personam* jurisdiction of Illinois courts. The United States Court of Appeals for the Seventh Circuit unanimously affirmed that decision. There is no reason for this Court to review. The decisions of the lower courts are consistent with

principles of due process as enunciated by this Court and do not conflict with the decision of any Court of Appeals. At most, Astilleros' Petition for a Writ of Certiorari ("Petition") raises an issue of statutory interpretation under the State of Illinois long-arm statute. Review by this Court of that state law question, however, is neither appropriate or necessary. Astilleros' Petition should thus be denied.

STATEMENT OF THE CASE

Astilleros' statement of the case in support of its Petition is incomplete. The Amoco parties¹ thus present the following restatement of the facts:²

¹The Amoco parties are Amoco International Oil Company ("Amoco International"), Amoco Transport Company ("Amoco Transport"), Standard Oil Company (Indiana) ("Standard") and Claude Phillips, an employee of Amoco International. The following companies are subsidiaries or affiliates of Standard Oil Company (Indiana) and have stock or debt which is publicly traded: Amoco Canada Petroleum, Ltd., Amoco Credit Corp., Amoco Oil Holdings, S.A., Analog Devies, Inc., Cetus Corp., Chicago Bank of Commerce, Cyprus Mines Corp., Amoco (U.K.) Exploration Company, Amoco Australia Ltd., and Solarex Corp. Amoco International and Amoco Transport are wholly-owned subsidiaries, directly or indirectly, of Standard.

²The Statement of the Case is based on the various pleadings, affidavits and exhibits presented to the District Court in connection with Astilleros' motion to dismiss the claims against it. These materials will be referred to as follows: "R." or "R. Supp." (refers to the Record or Record Supplement filed in Seventh Circuit Appeal No. 82-1751); "App." (refers to Astilleros' Appendix Supplement in the Seventh Circuit); "Wren Sept. 10, 1979 Aff." (refers to the Affidavit Of Joseph Wren Submitted With Memorandum Of Amoco Transport Company In Opposition To Motion Of Astilleros Espanoles, S.A. To Dismiss Third-Party Claim in No. 78 C 3693); "Wren Dec. 17, 1979 Aff." (refers to the Supplementary Affidavit Of Joseph Wren Submitted With Surreply Of Amoco Transport Company In Opposition To Motion Of Astilleros Espanoles, S.A. To Dismiss

(footnote continued on next page)

A. Astilleros Purposefully Did Business In The State Of Illinois Relating To The Claims Against It.

Astilleros is engaged in the business of ship construction and repair. (Petition at 2.) During 1969 and the early 1970's, Astilleros went to Illinois and had numerous meetings with Amoco International, an Illinois citizen.³ As a result of those meetings, Astilleros contracted to build, and then designed and built, the Amoco Cadiz oil tanker and three sisterships. Although these vessels were constructed in Spain, the negotiations and execution of the ship design and construction contracts, as well as discussions concerning contract plans and specifications prior to, during and after construction, took place in the United States, principally in Chicago, Illinois, but also in New York. As detailed below, these numerous and substantial Illinois business dealings by Astilleros more than satisfy the "minimum contacts" requirement of due process.

1. Astilleros Voluntarily And Purposefully Came To Illinois To Negotiate And Execute Contracts With Amoco International To Build The Amoco Cadiz.

In July 1970, Astilleros sent several of its executives to Chicago, Illinois to negotiate for a contract to design, construct and sell the Amoco Cadiz. (Wren Sept. 10, 1979 Aff. ¶ 3.) These executives included Eduardo Garcia-Maurino Martinez, Astilleros' Director of Legal Services; Bartolome Carominas, commercial director for Astilleros' shipyard and the eventual signer of the Amoco Cadiz contract; and Ramon Fornelles, Astilleros' chief naval architect and technical

(footnote continued from preceding page)

Third-Party Claim in No. 78 C 3693); "Martinez Aff." (refers to the Affidavit of Eduardo Garcia-Maurino Martinez, dated January 3, 1979, in No. 78 C 4945 (S.D.N.Y.).)

³Amoco International is a Delaware corporation having its principal place of business in Chicago, Illinois. (R. Supp. (Complaint in No. 79 C 3761).) Standard, the parent of Amoco International, is also an Illinois citizen and Claude Phillips, an Amoco International employee, is an Illinois resident. (*Id.*)

director. (*Id.*) They stayed in Chicago for two weeks to negotiate the Amoco Cadiz contract. (*Id.*)

While in Chicago, Astilleros' executives met and negotiated with Robert Haddow, then a Vice-President of Amoco International, and with other Amoco International employees.⁴ At the conclusion of the negotiations, the contract, a forty-page document printed in English, was executed in Chicago on July 31, 1970, by Bartolome Carominas on Astilleros' behalf, with Astilleros executive Eduardo Garcia-Maurino Martinez witnessing the execution. (Wren Dec. 17, 1979 Aff. ¶ 3; App. 86.) Haddow of Amoco International executed the contract acting as agent for the

⁴Throughout its Petition, Astilleros asserts that the contract to build the Amoco Cadiz was negotiated not with the employees of this Illinois-based corporation but with Amoco Tankers, a Liberian corporation. (Petition at 3, 4, 16, 19-23.) This contention is not correct. Astilleros negotiated with Haddow and other Amoco International employees. (Wren Sept. 10, 1979 Aff. ¶ 3; see also June 29, 1982 trial testimony of Mr. Haddow at pp. 4338-4346.) In fact, as of the Amoco Cadiz contract date, Amoco Tankers, the Liberian affiliate of Amoco International which ultimately took delivery of the Amoco Cadiz, was not even in existence. (App. 52.)

Although Astilleros knows with whom it dealt, the fact that Haddow was an executive employed by Amoco International was not part of the Record at the time Astilleros took its interlocutory appeal. In considering Astilleros' Petition, however, the Court should know that the evidence presented at trial established this known fact, about which there is no dispute and which, of course, may be noticed judicially. See, e.g., *Green v. Warden, U.S. Penitentiary*, 699 F.2d 364, 369 (7th Cir. 1983) (Court of Appeals may take judicial notice of proceedings and filings in other courts); *Rothenberg v. Security Management Co., Inc.*, 667 F.2d 958, 961 n.8 (11th Cir. 1982) (Court of Appeals may take judicial notice of subsequent matters in cases that are a matter of public record); *Bryant v. Carleson*, 444 F.2d 353, 357 (9th Cir.), cert. denied, 404 U.S. 967 (1971) (Court of Appeals may take judicial notice of developments in case since taking appeal).

vessel's eventual owner, Amoco Tankers, an affiliate of Amoco International not in existence when the contract was signed but which was to be formed within 60 days of the contract's execution date. (App. 86; R. Supp. (Complaint in No. 79 C 3548).)⁵

The contract obligated Astilleros to design and construct the vessel. (App. 50-72.) It also specifically provided that certain notices and communications were to be sent to Amoco International in Chicago, Illinois, as follows:

AMOCO Tankers Company
c/o AMOCO International Oil Company
500 N. Michigan Avenue
Chicago, Illinois 60611
CABLE ADDRESS: AMOCOSHIPS, Chicago

(App. 85.) The contract required further that Astilleros provide to Amoco International in Chicago on behalf of Amoco Tankers an irrevocable letter of guaranty. (App. 74.) Under the contract, Astilleros was to be paid a total of \$23,600,000. (App. 54.)

In addition to negotiating and executing the Amoco Cadiz design and construction contract in Chicago, the same Astilleros executives also held concurrent meetings in Chicago to discuss the vessel's technical plans and specifications. (Wren Dec. 17, 1979 Aff. ¶ 4.) As a result of these meetings and discussions, Astilleros executive Bartolome Carominas signed an additional agreement in Chicago, also on July 31, 1970. (Wren Dec. 17, 1979 Aff. ¶ 5.) That agreement, again signed by Haddow of Amoco International, related to certain technical specifications for the Amoco Cadiz. (*Id.*)

Thus, after sending its executives to Chicago, Illinois, and following two weeks of negotiations there, Astilleros executed two contracts in Illinois. Those contracts for the

⁵ Amoco Tankers is not a party to the litigation because it sold the Amoco Cadiz to Amoco Transport shortly after taking delivery of the vessel in 1974. (Petition at 4.)

design, sale and construction of the Amoco Cadiz also obligated Astilleros to have further contacts with Illinois relating to that vessel.

2. During The Years Following Execution Of The Amoco Cadiz Contracts, Astilleros Voluntarily And Purposefully Returned To Illinois To Meet And To Discuss Various Design And Construction Aspects Of The Amoco Cadiz.

After executing the Amoco Cadiz contracts in July 1970, Astilleros sent its employees back to Illinois during the next several years to meet and to discuss various aspects of the Amoco Cadiz design and construction. On June 13-15, 1972, for example, two Astilleros employees, Messrs. Alvarez Serrano and A. Bausa Villar, along with Myron Sawyer, Astilleros' resident U.S. agent, met in Chicago with Joseph Wren, Amoco International's Manager of Marine Technical Services, and with other Amoco International employees. (Wren Sept. 10, 1979 Aff. ¶ 5.) The purpose of these meetings was to discuss a variety of technical details relating to the design and construction of the Amoco Cadiz and its sisterships. (*Id.*)

Similarly, in August 1975, over a year after delivery of the Amoco Cadiz, Astilleros sent employee Fernando Sicre and others to meet for more than one week in Chicago. (Wren Sept. 10, 1979 Aff. ¶ 6.) The purpose of these meetings was to discuss certain Amoco Cadiz guarantee items which were provided for by the Amoco Cadiz contracts. (*Id.*) These 1975 discussions and meetings related specifically to the Amoco Cadiz, then owned by Respondent Amoco Transport, and its performance during the first year after delivery. In addition to these business contacts in Illinois after the Amoco Cadiz contracts were negotiated, Astilleros continued its Illinois dealings by sending many letters concerning the Amoco Cadiz to Amoco's offices in Chicago. (Wren Sept. 10, 1979 Aff. ¶ 7.)

3. Astilleros Not Only Conducted Business In Illinois Relating To The Amoco Cadiz, But Also Voluntarily And Purposefully Came To Illinois And Other States To Solicit And To Do Additional Business.

The Amoco Cadiz contracts Astilleros negotiated in Illinois with Haddow of Amoco International were not the first business dealings Astilleros had in the state. To the contrary, Astilleros had met and executed other ship construction contracts with Amoco International in Illinois. On March 6, 1969, Astilleros executed contracts in Chicago to build the Amoco Milford Haven and the Amoco Singapore, two sisterships of the Amoco Cadiz. (Wren Sept. 10, 1979 Aff. ¶ 8.) The agreements for these two vessels were negotiated by Haddow and other Amoco International employees. (June 29, 1982 trial testimony of Mr. Haddow at pp. 4341-4342.)

The contract for the Amoco Europa, another Amoco Cadiz sistership, also was negotiated and signed by Astilleros in Chicago during 1970. (Wren Sept. 10, 1979 Aff. ¶ 9.) Negotiations concerning the technical plans and specifications for that ship were conducted in Chicago with Astilleros' executives at the same time. (*Id.*) Astilleros later met in Chicago during July 1976 to discuss the Amoco Singapore. (Wren Sept. 10, 1979 Aff. ¶ 8.)

In addition to Illinois meetings relating to the Amoco Cadiz and her sisterships, Astilleros' employees and representatives regularly have solicited other business in Illinois from Amoco International. (Wren Sept. 10, 1979 Aff. ¶ 13.) Astilleros' employees have made business trips into and have sent many letters to Illinois. (*Id.*) They also have made many phone calls to Amoco International employee Wren in an attempt to garner business. (*Id.*) In July 1971, for example, Astilleros sent executives Corominas, Fornelles, Martinez and Santiago Azpiroz to Chicago to discuss the feasibility of incorporating certain technology in proposed liquid natural gas (LNG) ships. (Wren Sept. 10, 1979 Aff. ¶ 11.) Similarly, in April 1973, Corominas, Fornelles and

other Astilleros' employees met in Chicago to negotiate contracts to design and to construct additional ships for the Amoco parties. (Wren Sept. 10, 1979 Aff. ¶12.)

Although Astilleros in its Petition attempts to portray itself as a Spanish shipbuilder with little reason to be called upon to defend its conduct in this country, the simple fact is that for many years Astilleros solicited ship construction business not only from Illinois residents but throughout the United States. In 1971, for example, Astilleros opened an office at 270 Park Avenue, New York, New York, for the purpose of soliciting ship construction and repair contracts in the United States. (Martinez Aff. ¶5.) Astilleros maintained that New York office until at least 1976. (*Id.*) In 1976, Astilleros retained a Mr. Wesley D. Wheeler of New York to solicit ship construction and repair contracts throughout the United States. (Martinez Aff. ¶¶ 6-8.) Astilleros also has earned millions of dollars of income as a result of its Illinois activities—for example, the contract sums paid it by the Amoco parties for the four oil tankers.

B. The Procedural History Of This Litigation.

The Amoco Cadiz, the vessel which Astilleros built as a result of its Illinois business activities, grounded off the coast of France on March 16, 1978, and lost its 220,000-ton cargo of crude oil. After the grounding, the Republic of France, various French municipalities and other French parties filed lawsuits against the Amoco parties in the United States District Court for the Northern District of Illinois alleging, *inter alia*, that the wreck was caused by the negligent design and construction of the Amoco Cadiz. In addition to suing the Amoco parties, Conseil General des Cotes du Nord along with some of the other French plaintiffs filed an action against Astilleros, alleging negligent design and construction of the Amoco Cadiz and other tortious conduct. (R. Supp. (79 C 3761).)

The Amoco parties responded to the French suits by filing third-party complaints and cross-claims against Astilleros,

stating that if faulty design and construction caused the casualty, Astilleros is responsible. The cross-claims requested indemnification or contribution in the event the Amoco parties were found liable to the various French plaintiffs. The Amoco parties also requested that the French plaintiffs be required to recover directly from Astilleros under Rule 14(c), Fed. R. Civ. P. (R. 2, 15, 23.)

Astilleros was served in these various lawsuits pursuant to the Illinois long-arm statute, which provides in pertinent part:

(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(1) the transaction of any business within this State; . . .

(c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this Section.

Ill. Rev. Stat. ch. 110, ¶2-209 (formerly ch. 110, ¶17) (1981). After service, Astilleros refused to appear in any of the actions, except to argue that the District Court lacked personal jurisdiction over it. (R. 3, 17, 25.) Briefs and affidavits were filed and on December 26, 1979, Judge Frank J. McGarr, now Chief Judge of the United States District Court for the Northern District of Illinois, denied Astilleros' motion to dismiss.⁶

⁶ Astilleros also argued in the District Court that the court lacked subject matter jurisdiction and that the case should be dismissed on *forum non conveniens* grounds. The District Court rejected these arguments and Astilleros did not raise them on appeal.

Stating that the "minimum contacts" requirement of the due process clause only requires "some conduct by virtue of which the defendant" may be said to have "invok[ed] the benefits and protection" of Illinois law, Judge McGarr found first that Astilleros' many Illinois business dealings easily satisfied this requirement:

By voluntarily conducting negotiations in Illinois concerning the design and manufacture of the Amoco Cadiz, Astilleros conducted activities within the state, thereby invoking the benefits and protection of its laws. . . . The claim of alleged negligent design and manufacture of the tanker "lies in the wake" of the negotiations which took place in Chicago.

In re Oil Spill By The "Amoco Cadiz" Off The Coast Of France, 491 F. Supp. 170, 172, 174 (N.D. Ill. 1979).

Having found that Astilleros had the requisite minimum contacts in Illinois, the Court then ruled that it was subject to Section 2-209(a)(1) of the Illinois long-arm statute because it had transacted business in the state. In so ruling, Judge McGarr expressly rejected Astilleros' contention that under the Illinois long-arm statute a tort cause of action may not be based on a non-resident defendant's related Illinois business dealings.

The mere fact that the negotiations dealt with matters ultimately framed into a contract does not insulate Astilleros from a tort claim relating to the product which was the subject of the contract. The type of activity conducted [by Astilleros] in Chicago satisfies the jurisdictional predicate of the transaction of business within this state such that the assertion of personal jurisdiction over Astilleros does not offend traditional notions of fair play and substantial justice.

491 F. Supp. at 174.

After Judge McGarr denied its motion to dismiss, Astilleros explicitly refused to defend itself further in the actions. Accordingly, on April 20, 1982, the Amoco parties requested and the District Court entered default judgments on liability against Astilleros and in favor of the Amoco parties in action Nos. 78 C 3693, 79 C 3548 and 79 C 3761. In action No. 79 C 3761, the Court entered a default judgment in favor of Conseil General Des Cotes du Nord and other French plaintiffs on May 26, 1982.

Astilleros appealed from these default judgments to the United States Court of Appeals for the Seventh Circuit, arguing that it was not subject to the personal jurisdiction of an Illinois court. The Seventh Circuit unanimously affirmed Judge McGarr's jurisdictional ruling, rejected each of Astilleros' contentions, and held that by negotiating and signing the Amoco Cadiz contracts in Illinois, and then returning to the state to discuss certain technical matters about the vessel, Astilleros had the requisite minimum contacts to subject it to the personal jurisdiction of an Illinois court. *In re Oil Spill By The "Amoco Cadiz" Off The Coast Of France*, 699 F.2d 909, 914-917 (7th Cir. 1983).

The Seventh Circuit held further that the Amoco parties' claims against Astilleros were sufficiently related to Astilleros' Illinois contacts to satisfy the Illinois long-arm statute's requirement that the cause of action arise from Astilleros' transaction of business in Illinois. Given the express provisions of the Illinois long-arm statute and the decisions of Illinois state courts interpreting those provisions, the Seventh Circuit ruled that the lawsuits for negligent design and construction relate to and "lie in the wake of" Astilleros' commercial activities in Illinois.

Using an inadvertently apt metaphor, the Illinois Appellate Court has said that the statutory phrase "arising from" "requires only that the plaintiff's claim be one which lies in the wake of the commercial activities by which the defendant submitted to the jurisdiction of the Illinois courts," *Koplin v. Thomas*,

Haab & Botts, 73 Ill. App. 2d 242, 253, 219 N.E.2d 646, 651 (1966), and that test is satisfied here.

699 F.2d at 915.

Astilleros filed a petition with the Seventh Circuit for rehearing with suggestion for rehearing *en banc*, which was denied.

REASONS FOR DENYING THE WRIT

Astilleros' Petition should be denied because the decisions of the lower courts do not conflict with the rulings of this Court or any Circuit Court of Appeals. Moreover, the Petition raises, at most, an issue of state law—whether the Illinois long-arm statute allows a tort cause of action to be based on a defendant's related Illinois business activities.

Astilleros argues that review is warranted because it did not have the requisite "minimum contacts" with Illinois. The Record and facts found by the lower courts belie this claim. The facts show that Astilleros voluntarily and purposefully came to Illinois on at least seven occasions over a several year period to solicit and to do business. It acquired significant business from these Illinois visits, including the negotiation and execution of construction and design contracts in Illinois for the Amoco Cadiz. Astilleros later returned to Illinois to discuss the Amoco Cadiz, and as a result of these Illinois business dealings earned millions of dollars in fees. Given these facts, there can be no serious question that Astilleros has had more than the "minimum contacts" necessary to permit an Illinois court to exercise *in personam* jurisdiction over it.

Astilleros' claim that the lower courts have adopted a new and improper "mechanical test" for determining when a non-resident defendant is subject to a court's jurisdiction is also erroneous and does not warrant review by this Court. (Petition at 17-19.) Contrary to Astilleros' argument, the District Court did not apply a "mechanical test", stating instead that whether there exist the requisite minimum contacts "cannot be determined by a set formula . . . but must be determined

from the particular facts of each case." 491 F. Supp. at 172. Likewise, there is nothing in the Seventh Circuit's opinion to substantiate Astilleros' claim that the Circuit Court applied a different due process standard to Astilleros because it is an alien corporation.

In short, Astilleros' Petition does not raise significant constitutional or federal questions which call for this Court to exercise its discretion and review the lower courts' decisions. The Petition, therefore, should be denied.

ARGUMENT

I.

THE RULINGS OF THE COURTS BELOW DO NOT CONFLICT WITH THE DECISIONS OF ANY OTHER FEDERAL COURT OF APPEALS AND ARE FULLY CONSISTENT WITH THE PRINCIPLES OF DUE PROCESS AS ENUNCIATED BY THIS COURT.

The Constitution requires only that a non-resident defendant have such "minimum contacts" with the forum that the assertion of *in personam* jurisdiction over it does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Although the test, based on the facts of each case, is flexible, the ultimate question nevertheless is whether the defendant, by its own conduct, has invoked the benefits and protection of the jurisdiction's laws. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

The lower courts here applied this test, and found as a factual matter that Astilleros had invoked the benefits and protection of Illinois laws. 491 F. Supp. at 174. That conclusion was correct and does not require review. Moreover, it does not conflict with the decisions of any other Court of Appeals or depart from the principles of due process as enunciated by this Court.

Astilleros nevertheless claims error by ignoring the facts and contending that (1) its "single" contact with Illinois was the negotiation and execution of a contract with a non-

resident, non-party to the litigation; and (2) the tort actions against it are unrelated to the Illinois contract it executed. (Petition at 9, 10.) These claims not only are incorrect, they do not raise significant constitutional or federal issues meriting this Court's consideration.

First, Astilleros has mischaracterized the facts. Contrary to Astilleros' suggestion, its Illinois contacts were not limited to the execution of a single contract with a non-resident "stranger" to the litigation. (Petition at 10.) Instead, the Record shows that Astilleros intentionally came to Illinois and negotiated with Respondent Amoco International, an Illinois resident and party to the lawsuit. Astilleros also executed in Illinois, along with Amoco International, at least four separate contracts over a two-year period, including contracts for the design and construction of the Amoco Cadiz. It later returned to the state to discuss Amoco Cadiz guarantee matters after the vessel had been owned for over a year by Respondent Amoco Transport. In addition, Astilleros solicited other business in Illinois over a period of several years.

These extensive contacts, including at least seven voluntary appearances in Illinois by Astilleros to do business, are more than sufficient to subject Astilleros to an Illinois court's jurisdiction. There is no dispute among the various Circuits that when a non-resident comes into a state to negotiate or sign a contract, the due process requirement of "minimum contacts" is satisfied. *See, e.g., Standard Fittings Co. v. Sapag, S.A.*, 625 F.2d 630, 643-644 (5th Cir. 1980), *cert. denied*, 451 U.S. 910 (1981) (although contract was executed in France, pre-contract visit to Louisiana to promote product and a few subsequent visits to further contractual performance held to constitute sufficient minimum contacts); *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 415 (9th Cir. 1977) (negotiation and consummation of loan agreement constituted minimum contacts); *Du-Al Corp. v. Rudolph Beaver, Inc.*, 540 F.2d 1230, 1232-1233 (4th Cir. 1976) (suit based on a

contract having substantial connection to state—i.e., negotiations and partial execution there); *Davis H. Elliot Co., Inc. v. Caribbean Utilities Co., Ltd.*, 513 F.2d 1176, 1180-1182 (6th Cir. 1975) (negotiation and execution of contract in state is sufficient); *Scovill Mfg. Co. v. Dateline Electric Co., Ltd.*, 461 F.2d 897, 900 (7th Cir. 1972) (contract negotiations in Illinois sufficient to satisfy due process even though contract not executed in state); *Doyn Aircraft, Inc. v. Wylie*, 443 F.2d 579, 582-583 (10th Cir. 1971) (negotiation and execution of contract sufficient); *Thompson v. Ecological Science Corp.*, 421 F.2d 467, 468-470 (8th Cir. 1970) (negotiations lasting two days and a few telephone calls sufficient); *Liquid Carriers Corp. v. American Marine Corp.*, 375 F.2d 951, 954-956 (2d Cir. 1967) (contract negotiations in forum sufficient).

Second, Astilleros is incorrect when it asserts that the “constitutionally required nexus between the forum and the cause of action” is lacking in that the tort actions against it are unrelated to its Illinois business activities. (Petition at 12.) Quite the contrary, the tort actions are related to its Illinois business activities because the Amoco parties’ claims grow out of the agreements Astilleros made in Illinois to design properly and to construct the Amoco Cadiz. Moreover, Astilleros is also wrong when it argues that the Constitution requires that a tort action be based on tortious conduct in the forum. There is no such constitutional requirement. Nothing in the Constitution prohibits personal jurisdiction in tort actions from being based on a defendant’s related business activities in the forum. Indeed, even the authorities cited by Astilleros require only that there be a relationship between the defendant, the forum and the litigation. *Rush v. Savchuk*, 444 U.S. 320, 327 (1980); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

Astilleros’ claim that the lower courts’ rulings here are incompatible with this Court’s decisions in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and in *Kulko v. California Superior Court*, 436 U.S. 84 (1978), is also erroneous. *World-Wide Volkswagen* was a products liability case arising

out of an Oklahoma automobile accident. In contrast to Astilleros' purposeful Illinois activities, two of the New York corporate defendants in *World-Wide Volkswagen* had never visited Oklahoma, sent employees there or done any business there. Given the absence of any voluntary or purposeful Oklahoma business activity by defendants, this Court held that they were not subject to the personal jurisdiction of an Oklahoma court.

The Court's decision in *Kulko v. California Superior Court*, 436 U.S. 84 (1978), is likewise inapplicable here. In *Kulko* the Court ruled that personal jurisdiction could not be asserted by a California court over a New York resident whose only California contacts had been two short personal visits to the state some thirteen years before the lawsuit and who had neither transacted business in California nor committed a tort there. Again, unlike the defendant in *Kulko*, Astilleros has transacted in Illinois substantial business specifically involving the Amoco Cadiz.

Astilleros' reliance on *Reich v. Signal Oil & Gas Co.*, 409 F. Supp. 846 (S.D. Tex. 1974), *aff'd mem.*, 530 F.2d 974 (5th Cir. 1976), is similarly misplaced. First, *Reich* does not hold that as a matter of constitutional due process a tort action may not be based on a non-resident defendant's business activities in the forum, as Astilleros argues. (Petition at 10.) To the contrary, *Reich* involved primarily a question of statutory construction of the Texas long-arm statute, not a broad constitutional issue. Second, the portion of *Reich* quoted by Astilleros in its Petition at page 10 was expressly disavowed by the Fifth Circuit in *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1270 n.21 (5th Cir. 1981), where the Circuit Court explained that tort actions may be based on a non-resident defendant's business activities in the forum.

[Defendant] argues that even if it had entered into the contract with decedents' employer, the statutory nexus requirement is not met because the plaintiffs' action sounds in tort while [defendant's]

contact with Texas would be contractual. Put simply, [defendant] takes the view that a tort suit cannot arise from a contractual contact, and presumably vice versa. [Defendant] is not alone in this view. See *Reich v. Signal Oil & Gas Co.*, 409 F. Supp. 846 (S.D. Tex. 1974), *aff'd mem.*, 530 F.2d 974 (5th Cir. 1976). This simplistic view, however, is much too narrow an interpretation of a statute that is to be given the broadest possible construction. . . . Logically, there is no reason why a tort cannot grow out of a contractual contact. In a case like this, the contractual contact is a "but for" causative factor for the tort since it brought the parties within tortious "striking distance" of each other. While the relationship between a tort suit and contractual contact is certainly more tenuous than when a tort suit arises from a tort contact, that only goes to whether the contact is by itself sufficient for due process, not whether the suit arises from the contact.

The question is not, as Astilleros repeatedly asserts, the "simplistic" one of whether or not the tort—here the misdesign, improper construction and consequent grounding of the Amoco Cadiz—took place in Illinois. Instead, the issue involves a determination of whether Astilleros has the requisite minimum contacts. Given that Astilleros voluntarily and repeatedly engaged in significant business transactions concerning the Amoco Cadiz with Amoco International in Illinois, there can be no serious question that the minimum contacts test has been satisfied. Nor can there be any doubt that in light of its Illinois contacts Astilleros certainly could have reasonably foreseen being subject to the jurisdiction of an Illinois court.

In sum, the lower courts' holdings are consistent with those of the other Circuits and they do not raise any significant or unique constitutional question calling for this Court's review.

II.

ASTILLEROS' PETITION RAISES, AT MOST, A QUESTION OF STATE LAW.

The only possible legal issue raised by Astilleros' Petition is, at most, one of state statutory construction: whether the Illinois long-arm statute allows a tort cause of action to be based on a defendant's related Illinois business activities. Astilleros asserts that the statute does not allow this (Petition at 12-13), but resolution of this state law question is not, as observed in *Butner v. United States*, 440 U.S. 48, 58 (1979), an issue normally considered by this Court on a petition for a writ of certiorari.

We decline to review the state-law question. The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues.

Review of this state law question is not only inappropriate, it also is unnecessary because Astilleros' interpretation of the Illinois long-arm statute is wrong, as a brief examination of the decisions construing the statute make clear.

The Illinois long-arm statute provides in part that jurisdiction over a non-resident defendant may be asserted in causes of action "arising from the doing of any of [the specified jurisdictional] acts," such as a claim arising from the transaction by defendant of any business in the state. Ill. Rev. Stat. ch. 110, ¶ 2-209(a) (1981). Illinois courts have held that this statutory requirement is satisfied whenever the cause of action sued on "lies in the wake of the commercial activities by which the defendant submitted to the jurisdiction of Illinois courts." *Koplin v. Thomas, Haab & Botts*, 73 Ill. App. 2d 242, 253, 219 N.E.2d 646, 651 (1st Dist. 1966); see also *International Merchandising Associates, Inc. v. Lighting Systems, Inc.*, 64 Ill. App. 3d 346, 350, 380 N.E.2d 1047, 1051 (1st Dist. 1978) (statute only requires that the business done be related to the cause of action).

Thus, it is clear that under the Illinois long-arm statute jurisdiction in a tort action may be based on a non-resident defendant's in-state transaction of business so long as the tort claim "lies in the wake" of the business activities. *Morton v. Environmental Land Systems, Ltd.*, 55 Ill. App. 3d 369, 373, 370 N.E.2d 1106, 1110 (1st Dist. 1977) (where the jurisdictional act consists of "solicitation of sales, a cause of action arising from the consequences of such a sale comes within the statutory definition"). For example, in *Dalton v. Blanford*, 67 Ill. App. 3d 91, 383 N.E.2d 806 (5th Dist. 1978), an Illinois court held that it could exercise *in personam* jurisdiction over a non-resident party in a tort action because the tort was related to the party's transaction of Illinois business. In that case, plaintiff sought to recover for injuries suffered in a fall from a horse, alleging the fall was caused by a defective saddle sold him by defendant. Defendant in turn filed a third-party claim for indemnification against a non-resident from whom he had purchased the defective saddle.

Although the saddle had been purchased by defendant from the third-party defendant in Oklahoma, the court found that the third-party defendant had solicited the sale in Illinois and was thus subject to the court's jurisdiction. Significantly, jurisdiction was not based on the commission of any tort in Illinois by the third-party defendant, as Astilleros says was necessary. Instead, jurisdiction for purposes of the third-party indemnification claim in tort was based on the third-party defendant's transaction of Illinois business in soliciting the sale of the saddle.

By the same token here, the basis for asserting personal jurisdiction under the Illinois long-arm statute over Astilleros is the shipbuilder's undisputed presence in Illinois to negotiate and execute design and construction contracts, to work out the technical plans and specifications for the Amoco Cadiz, and to discuss guarantee items for the vessel during the first year after delivery. The claims against Astilleros, that it negligently designed and constructed the Amoco Cadiz, are clearly related to and lie in the wake of its Illinois business activities. This is all

that the Illinois long-arm statute requires. *See, e.g., Hutter Northern Trust v. Door County Chamber of Commerce*, 403 F.2d 481 (7th Cir. 1968) (business transacted in Illinois must simply be related to the subject matter of the tort claim asserted); *People ex rel. Scott v. Police Hall of Fame, Inc.*, 60 Ill. App. 3d 331, 376 N.E.2d 665 (1st Dist. 1978) (case based on the tort of common law fraud, jurisdictional act was the transaction of business); *Technical Publishing Co. v. Technology Publishing Corp.*, 339 F. Supp. 225 (N.D. Ill. 1972) (the court's analysis focused primarily on the defendant's transaction of business in the state, although the court also found the commission of a tortious act in the state).⁷

The premise of Astilleros' argument, that it can be sued in Illinois only for breach of contract but not for the injuries caused by its faulty performance of the same contract, is false. The Illinois long-arm statute only requires that the cause of action against a non-resident defendant lie in the wake of its forum activities. That requirement has been met in this case, and is, in any event, an issue more appropriately considered by the federal and state courts of Illinois, not this Court.

⁷ Astilleros' claim that the Illinois Supreme Court in *Green v. Advance Ross Electronics Corp.*, 86 Ill. 2d 431, 427 N.E.2d. 1203 (1981), interpreted the Illinois long-arm statute to confer jurisdiction in tort actions only where the tort or injury occurred in Illinois is incorrect. (Petition at 12-13.) The parties in that case admitted that no Illinois activity of defendant had any relationship to the cause of action. 86 Ill. 2d at 435, 427 N.E.2d at 1205. In addition, the plaintiff only asserted that jurisdiction was appropriate under the portion of the Illinois long-arm statute dealing with tort actions. The question whether a tort action could be based on a related non-tortious business transaction in Illinois was never discussed or even raised. 86 Ill. 2d at 435-436, 427 N.E.2d at 1206.

III.

**THE AMOCO PARTIES' CONTACTS WITH ILLINOIS
ARE NOT RELEVANT TO DETERMINING WHETHER
ASTILLEROS IS SUBJECT TO THE *IN PERSONAM*
JURISDICTION OF AN ILLINOIS COURT.**

Astilleros makes much of the fact that neither it nor Amoco Tankers is an Illinois resident, stating repeatedly in its Petition that this case only involves two non-residents and their single Illinois contract. (Petition at 3, 4, 16, 19-23.) As already discussed, that is, of course, not the case. The facts are that Astilleros dealt extensively with Amoco International, an Illinois resident corporation, in Illinois.⁸ Indeed, Amoco Tankers Company, the Liberian company that Astilleros continuously asserts it negotiated with, was not even in existence during the negotiations or at the time the Amoco Cadiz contracts were executed.

Even if Astilleros had dealt in Illinois only with Amoco Tankers, another non-resident, that fact is not relevant. It is settled law that whether a non-resident corporate defendant is subject to the *in personam* jurisdiction of a court depends on the defendant's contacts and relationship with the forum, not the contacts of other parties. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

In *Scovill Mfg. Co. v. Dateline Electric Co., Ltd.*, 461 F.2d 897, 900 (7th Cir. 1972), for example, a Connecticut corporation sued an English corporation in Illinois for breach of contract. Jurisdiction was based on preliminary meetings held between the parties at a Chicago trade show. On defendant's motion, the District Court dismissed for want of personal jurisdiction. The

⁸To the extent that the plaintiff's residence is a relevant consideration on the personal jurisdiction question, three of the four plaintiffs here are Illinois residents—i.e., Standard, Amoco International and Claude Phillips. The fourth plaintiff, Amoco Transport, owned the Amoco Cadiz during the time Astilleros appeared in Illinois and had discussions and meetings about the vessel.

Seventh Circuit reversed, stating that a "defendant who sends an agent into Illinois to solicit or to negotiate a contract is transacting business" in the state, and, moreover, defendant's contacts were of such importance and substance as to satisfy the minimum contacts test. 461 F.2d at 900.

In response to the same argument made now by Astilleros, that neither plaintiff nor defendant was an Illinois resident, the Seventh Circuit in *Scovill* stated:

[W]e attach no significance to the fact that neither party is a resident of Illinois. Nonresidents as well as residents of Illinois have access to the Illinois courts and to the federal courts sitting in that state.

461 F.2d at 900.

Scovill is not unique. This Court and other courts routinely have allowed a non-resident plaintiff to bring suit against a non-resident defendant so long as the defendant has the requisite minimum contacts with the forum. See, e.g., *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 447-449 (1952) (non-resident plaintiff allowed to maintain suit over non-resident defendant on cause of action unrelated to defendant's forum activities); *National Can Corp. v. K Beverage Co.*, 674 F.2d 1134, 1137 (6th Cir. 1982) (non-resident plaintiff was able to bring suit against non-resident defendant who had "never set foot" in state but had conducted business in forum); *Quasha v. Shale Development Corp.*, 667 F.2d 483 (5th Cir. 1982) (defendant was subject to Louisiana court's jurisdiction in suit brought by non-resident plaintiff because it had the requisite minimum contacts with state).

In an attempt to manufacture an issue allegedly calling for review by this Court, Astilleros asserts that the Seventh Circuit upheld jurisdiction over it only by piercing the corporate veils of Standard and "others" and then by creating a contract between Astilleros and Standard. (Petition at 19-23.) Astilleros is incorrect again. Nowhere in its opinion does the Seventh Circuit hold that it was necessary to pierce

the corporate identity of any party or find a contract between Astilleros and Standard before Astilleros could be held subject to the court's jurisdiction. To the contrary, as first made clear by the District Court when it denied Astilleros' jurisdictional motion, Astilleros is subject to the *in personam* jurisdiction of Illinois courts because of its substantial Illinois business dealings. The Seventh Circuit affirmed that decision, and Astilleros' claim that it could do so only by piercing corporate identities is simply not true.⁹

IV.

THE PRESENT CASE BEARS NO RESEMBLANCE TO THE PENDING *HELICOPTEROS* DECISION.

Astilleros suggests that its Petition should be granted because it allegedly raises issues "closely related" to those in *Hall, et al. v. Helicopteros Nacionales de Colombia, S.A.*, 638 S.W.2d 870 (Tex. 1982), *cert. granted*, — U.S. —, 103 S. Ct. 1270 (No. 82-1127, March 7, 1983). (Petition at 8, 26.) Astilleros' suggestion lacks merit. The cases are completely unrelated.

First, one of the two legal questions on which certiorari was granted in *Helicopteros*—whether a different due process

⁹ Astilleros' reliance on *Carty v. Beech Aircraft Corp.*, 679 F.2d 1051 (3d Cir. 1982), is misplaced. First, contrary to Astilleros' contention (Petition at 7; 24), the Third Circuit in *Carty* did not hold that cross-claims could not be used to justify jurisdiction as to a complaint. The Circuit Court did hold that solely as a matter of statutory interpretation, the Virgin Islands' long-arm statute would not permit this. *Id.* at 1063. Second, *Carty* is not relevant to this case in any event. Nowhere did the District Court or the Seventh Circuit state that the French plaintiffs did not have to establish *in personam* jurisdiction over Astilleros. Instead, as the Seventh Circuit noted, it would be "odd" to find that Astilleros had the requisite minimum contacts with respect to the cross-claims but not the complaints when both the cross-claims and complaints lie in the wake of, and are directly related to, Astilleros' Illinois conduct. 699 F.2d at 917.

standard applies to an alien resident of a foreign country as compared to a United States citizen—does not exist here. There is nothing in the District Court or Seventh Circuit opinions which suggests that a different due process standard was applied to Astilleros because it is not a U.S. corporation.

Second, the factual question presented in the *Helicopteros* case is in no way similar to Astilleros. Unlike the Peruvian helicopter company in *Helicopteros* which never once had any dealings with the plaintiffs in Texas, Astilleros had extensive, purposeful meetings and negotiations in Illinois with Respondent Amoco International, an Illinois resident. Astilleros also executed contracts in Illinois to design and construct the Amoco Cadiz and other vessels. This contrasts to the facts in *Helicopteros*, where the contracts to provide helicopter service were executed in Peru. Moreover, *Helicopteros* involved a wrongful death action, allegedly caused by pilot error, which was not based or related in any way to defendant's Texas contacts. As discussed in Section II, *supra*, however, the claims against Astilleros for negligent design and construction are related to and lie in the wake of its Illinois activities, which dealt precisely with the design and construction of the Amoco Cadiz.

In sum, given that one of the two legal issues in *Helicopteros* which the Court has agreed to consider is not raised by the lower courts' decisions here, and, that the two cases involve vastly different facts, joint consideration of the cases as suggested by Astilleros would not benefit the Court, the parties involved or other courts and litigants. Instead, such consideration only would complicate resolution of the specific issues raised by *Helicopteros*, none of which has any relevance whatsoever to Astilleros.

CONCLUSION

The lower courts found, and the Record shows, that by its own conduct Astilleros had voluntarily come into Illinois for the purpose of doing business on at least seven different occasions; that it had done business in Illinois over a several year period; and that it purposefully had sought and received the benefits and privileges of Illinois law. Given these facts, the lower courts concluded that Astilleros had more than "minimum contacts" with Illinois and could not credibly claim surprise at being haled into the state's courts. This conclusion is fully consonant with due process.

Astilleros now asks this Court to exercise its discretion and review the lower courts' rulings. There is no justification for this. Astilleros' Petition does not establish any conflict with another Circuit Court. To the contrary, Astilleros has raised, at most, a question of statutory construction under state law, an issue not warranting this Court's review. For these reasons, therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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